

40038-0001

10/089,125

REMARKS

This is a full and timely response to the non-final Official Action mailed May November 2, 2005, which imposed a Restriction Requirement in the present application. Accordingly, Applicant makes the following election and requests that examination of the elected claims on their merits be promptly conducted in light of the following remarks.

In the outstanding Office Action, the Office alleges that the present application contains claims drawn to four independent and patentably distinct inventions. The claims are grouped as follows:

- Claim Group 1: Claims 9-16;
- Claim Group 2: Claims 17-19;
- Claim Group 3: Claims 20-28; and
- Claim Group 4: Claims 29 and 30.

In response, Applicant elects Claim Group 1, claims 9-16 for immediate examination. Accordingly, claims 9-16 are presented for immediate examination. All other original claims are labeled as "withdrawn" herein.

Applicant does not disclaim the subject matter of any withdrawn claim and reserves the right to file any number of continuation or divisional applications to the withdrawn claims or to any other subject matter described in the present application.

Applicant further respectfully traverses the Restriction between Claim Groups 1 and 3. Groups 1 and 3 are related as product and process of making. For these claims to be held separate and distinct one of the following must be shown: "(1) that the process as claimed can be used to make another materially different product or (2) that the product as claimed can be made

40038-0001

10/089,125

by another materially different process.” MPEP § 806.05(f). The recent Office Action fails to provide this required showing to support a restriction of Claim Groups 1 and 3. For at least this reason, claims 20-28 should be examined in the present application with claims 9-16.

Applicant further traverses the Restriction between Claim Groups 1 and 4. Groups 1 and 4 are related as product and method of using. “A product and a process of using the product can be shown to be distinct inventions if either or both of the following can be shown: (A) the process of using as claimed can be practiced with another materially different product; or (B) the product as claimed can be used in a materially different process. The burden is on the examiner to provide an example, but the example need not be documented.” (MPEP § 806.05(h)). The recent Office Action fails to provide this required showing to support a restriction of Claim Groups 1 and 3. For at least this reason, claims 29 and 30 should be examined in the present application with claims 9-16.

Additionally, According to the MPEP § 803, if the search and examination of claims in an application can be made without serious burden, the examiner must examine those claims on the merits, even though they include claims to independent or distinct inventions. The recent Office Action fails to establish that any serious burden will be presented if all the claims are examined together in the present application. For at least this reason, claims 9-30 should be examined together in this application.

An examination of claims 9-16 on their merits is now respectfully requested. If any fees are owed in connection with this paper, that have not been elsewhere authorized, authorization is hereby given to charge those fees to Deposit Account 18-0013 in the name of Rader, Fishman &

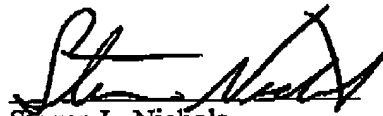
40038-0001

10/089,125

Grauer PLLC. If the Examiner has any comments or suggestions which could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,

DATE: 2 December 2005



Steven L. Nichols
Registration No. 40,326

Steven L. Nichols, Esq.
Managing Partner, Utah Office
Rader Fishman & Grauer PLLC
River Park Corporate Center One
10653 S. River Front Parkway, Suite 150
South Jordan, Utah 84095

(801) 572-8066
(801) 572-7666 (fax)

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted to the Patent and Trademark Office facsimile number 571-273-8300 on December 2, 2005. Number of Pages: 12


Rebecca R. Schow